

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

ESTATE OF ROGER D. :
OWENSBY JR., et al., :
 :
Plaintiffs, : Case No. 01-CV-769
vs. : (Judge S. A. Spiegel)
 :
CITY OF CINCINNATI, : VOLUME I
et al., :
 :
Defendants. :

Videotaped deposition of DAVID WILLIAM

HUNTER JR., a witness herein, called by the

plaintiffs for cross-examination, pursuant to the

Federal Rules of Civil Procedure, taken before me,

Wendy Davies Welsh, a Registered Diplomate Reporter

and Notary Public in and for the State of Ohio, at

the offices of Helmer, Martins & Morgan Co. LPA,

1900 Fourth & Walnut Centre, 105 East Fourth Street,

Cincinnati, Ohio, on Thursday, November 6, 2003, at

2:43 p.m.

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1 to the Sunoco station. What happens at that point?

2 A. I walk up and I looked in the window,
3 which the window I looked in, it's directly behind
4 the cash register and the clerk would be standing
5 right in front, you know, right there with his back
6 to that window. And then people making purchases
7 would be facing that -- that direction.

8 Q. Let me give you what I'm going to mark as
9 Exhibit 86, and it is a drawing of the Sunoco
10 station.

(Deposition Exhibit 86
was marked for identi-

11 fication.)
12

13 Q. If you would just indicate with a circle
14 and the number 1 where you were located, the -- the
15 window that you were looking through.

16 A. (Witness complies.)

17 Q. Thank you. Were -- were Jorg and Caton
18 standing at that window with you?

19 A. They were standing just behind me.

20 Q. All right. What happens at that point?

21 A. I look in the window. The -- the person,
22 Mr. Owensby, he steps to the counter to pay for his
23 drink. And I step back and I tell Caton and Jorg,
24 That's him.

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1 know whether or not he was carrying a nightstick?

2 A. I don't recall.

3 Q. A PR-24?

4 A. I don't recall if he was carrying one or
5 not.

6 Q. Do you know whether or not that night
7 Officer Jorg was carrying a collapsible PR-24 or a
8 regular full-size PR-24?

9 A. I don't remember what type he had.

10 Q. What happens next?

11 A. Officer Jorg and Officer Caton talk to Mr.
12 Owensby. They asked him questions. And then, like
13 I said, I -- I stood back, because I was still under
14 the contact-cover concept. If they both were going
15 to jump in and talk, then I just stood back as
16 cover. Because in actuality only one person should
17 have been talking. The other two should have been
18 standing back.

19 So once they were done doing their --
20 their thing, they -- the -- the last thing one of
21 them asked, I believe it was Officer Jorg, was,
22 "Well, have you ever fought the police?"

23 Q. Fought?

24 A. Fought. Fought the police. And then Mr.

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1 Owensby said no. Then, after that, that's when I
2 walked up. Well, you know, I -- not really walked
3 up, I was there, but that's when I came in the
4 doorway just, you know, where I could make eye
5 contact with Mr. Owensby. And I -- and I asked him,
6 I said, "So, have you ever ran from the police?"

7 And then when he saw that, it was a
8 reaction on his face and then that's when he broke
9 for the door.

10 THE REPORTER: I'm sorry, "broke for
11 the" --

12 THE WITNESS: The door.

13 A. Ran toward -- I mean, he was in the
14 doorway. And then it's like he tried to run past
15 us.

16 Q. When he broke to ran -- to run, did -- did
17 he push you or assault you in any way?

18 A. No.

19 Q. As he went past you, did -- did he get
20 completely past Officer Jorg and Caton before they
21 grabbed him?

22 A. I think he did. It happened so fast, but
23 I -- I think he actually just got -- because he went
24 by so fast. And then it was like, next thing you

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1 You recall that being read to you before?

2 A. Yes.

3 Q. All right. And I'm going to read you the
4 next question and answer, then.

5 "Question: Your testimony would be that
6 Roger Owensby continued to resist right until the
7 point that his arm was cuffed, correct?

8 "Answer: Yes."

9 Would that be fair?

10 A. Yes. Yeah.

11 Q. That was your testimony?

12 A. Yes, sir.

13 Q. Okay. And moving on to page 547. Well,
14 I'll take you up to 546. That's in fairness to Mr.
15 Martins. That's what he read to you. This was
16 about the heavy breathing. And we'll start at -- at
17 the question starting, 546, at line 15.

18 "Now, do you believe that immediately
19 after the struggle, when you and Blaine Jorg got up,
20 at that point, were you breathing a little heavily?

21 "Answer: Yes.

22 "Question: Was Blaine Jorg breathing a
23 little heavily?

24 "Answer: Yes.

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1 we eventually got him handcuffed.

2 Q. How much time elapsed from after you had
3 sprayed Mr. Owensby with the Mace to the time that
4 you got his right arm out?

5 A. A matter of maybe -- maybe a minute or
6 less.

7 Q. How much time was this entire procedure
8 from the time that Mr. Owensby ran between you and
9 the other officers to the time the handcuffs were
10 put on?

11 A. I did know the answer to that, because I
12 saw it, but right now I don't remember even reading
13 it. I honestly, you know, saw from the incident the
14 exact time. But when it happened, it seemed like
15 it -- maybe three and a half minutes, four minutes,
16 something like that.

17 Q. The -- you get his right arm out. Officer
18 Caton, I guess, gets the left arm out?

19 A. Yes.

20 Q. What happens next?

21 A. He was cuffed.

22 Q. Who cuffed him?

23 A. I don't remember.

24 Q. Did Officer Caton ever leave -- well,

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Deposition of ROBERT B. HEILAND JR.,

defendant herein, called by the plaintiffs for
cross-examination, pursuant to the Federal Rules of
Civil Procedure, taken before me, Wendy Davies
Welsh, a Registered Diplomate Reporter and Notary
Public in and for the State of Ohio, at the offices
of Helmer, Martins & Morgan Co. LPA, 1900 Fourth &
Walnut Centre, 105 East Fourth Street, Cincinnati,
Ohio, on Wednesday, December 3, 2003, at 10:10 AM.

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1 not you were looking at the two officers and Mr.
2 Owensby as they approached your vehicle; is that
3 correct?

4 A. Correct.

5 Q. Your answer was yes, you did?

6 A. Yes.

7 Q. I want to specifically ask you, could you
8 see Mr. Owensby's face at that time?

9 MR. MARTINS: Objection. Asked and
10 answered.

11 MR. WEISENFELDER: Go ahead.

12 MR. HARDIN: You asked it and he answered
13 it to you. I need to get it.

14 A. They were walking towards me and I could
15 see his face, yes.

16 Q. I think you indicated that you saw a
17 little blood on his face; is that right?

18 A. I did see blood on his face.

19 Q. Do you know in what area of the face you
20 may have seen blood?

21 MR. MARTINS: Objection. Asked and
22 answered.

23 MR. WEISENFELDER: Go ahead.

24 A. It was around the nose and the mouth area,

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1 A. No.

2 Q. Did you believe that Roger Owensby was
3 unconscious when he was placed in your vehicle?

4 MR. WEISENFELDER: Objection.

5 Go ahead.

6 A. No.

7 Q. Would you have allowed them to place him
8 in your vehicle if you had thought he was
9 unconscious?

10 MR. WEISENFELDER: Objection.

11 Go ahead.

12 A. No.

13 Q. Would you have allowed them to place him
14 in the vehicle if you thought he was seriously
15 injured?

16 MR. WEISENFELDER: Objection.

17 Go ahead.

18 A. No.

19 Q. With respect to the time that you went
20 over to the car to look in, do you recall that
21 testimony, where at some point after he was placed
22 in the car you returned to the car to look in it?

23 A. Yes, sir.

24 Q. You said you didn't use your flashlight.

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Videotaped deposition of DARREN VERESE

SELLERS, witness herein, called by the plaintiffs
for cross-examination, pursuant to the Federal Rules
of Civil Procedure, taken before me, Wendy Davies
Welsh, a Registered Diplomate Reporter and Notary
Public in and for the State of Ohio, at the offices
of Helmer, Martins & Morgan Co. LPA, 1900 Fourth &
Walnut Centre, 105 East Fourth Street, Cincinnati,
Ohio, on Tuesday, October 21, 2003, at 10:09 a.m.

10:45:22 1 under-- the plainclothes car come up there. And
10:45:26 2 they met us -- they -- they were at -- on station
10:45:30 3 at, I guess it was --

10:45:32 4 Q. Roselawn?

10:45:32 5 A. -- Roselawn Park. They were sitting there
10:45:34 6 waiting on us. Well, then the -- in between that
10:45:37 7 time, that's when the radio, we heard a whole bunch
10:45:39 8 of like -- it wasn't screaming, but it was a lot of
10:45:42 9 static and a lot -- you could hear a person on there
10:45:45 10 like they were struggling or something, on the
10:45:47 11 radio. And that's when the officer needs assistance
10:45:51 12 came out. I turned and looked at Hasse. Hasse
10:45:54 13 said, "That's them, go get them, go help them." So
10:45:57 14 I -- I sprinted from over here all the way down
10:45:59 15 towards the Sunoco to where I seen those -- those
10:46:01 16 guys at.

10:46:03 17 Q. Can you draw an arrow indicating the path
10:46:05 18 that you took from your car to the area where you
10:46:09 19 saw everyone.

10:46:12 20 A. Okay.

10:46:13 21 Q. Okay. Thank you.

10:46:13 22 A. Uh-huh.

10:46:14 23 Q. Let me ask you a few things. Had -- do
10:46:23 24 you know whether or not Officer Caton talked to your

10:56:01 1 feet were. I wasn't even looking at his feet.

10:56:04 2 Q. Okay. Was he bent over, holding the arm?

10:56:05 3 A. He was bent over, holding his arm.

10:56:07 4 Q. He had both hands on --

10:56:09 5 A. Both hands on his wrist.

10:56:15 6 Q. And if you recall, where was Officer

10:56:19 7 Hunter?

10:56:20 8 A. Hunter was in this position up here

10:56:24 9 (indicating).

10:56:27 10 Q. Okay. Was Mr. -- was Officer Hodge at the
10:56:30 11 scene when you arrived?

10:56:32 12 A. I didn't know who Hodge was until later on
10:56:36 13 they told me that's who -- who he was. But Officer
10:56:38 14 Hodge was over in this area here when I was trying
10:56:42 15 to get -- get his left arm from up under him,
10:56:47 16 Officer Hodge was over here.

10:56:48 17 Q. Okay.

10:56:48 18 A. Helping me.

10:56:50 19 Q. But what I'm asking is just when you come
10:56:53 20 on the scene and you see Owensby face-down on the
10:56:56 21 asphalt --

10:56:57 22 A. Uh-huh.

10:56:57 23 Q. -- you've indicated where Jorg was.

10:56:59 24 A. Uh-huh.

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CITY OF CINCINNATI, :
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Defendants. :

VOLUME I

Deposition of DANIEL L. SCHULTZ, M.D., a
witness herein, called by the plaintiffs for
cross-examination, pursuant to the Federal Rules of
Civil Procedure, taken before me, Wendy Davies
Welsh, a Registered Diplomate Reporter and Notary
Public in and for the State of Ohio, at the Frank P.
Cleveland, M.D. Institute of Forensic Medicine,
Toxicology and Criminalistics, 3159 Eden Avenue,
Cincinnati, Ohio, on Wednesday, December 17, 2003,
at 11:57 a.m.

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1 Q. What was your opinion to a reasonable
2 degree of medical certainty in the field of forensic
3 pathology, as to the cause of death of Mr. Owensby?

4 A. Cause of death, mechanical asphyxia.

5 Q. Would you explain to us what mechanical
6 asphyxia is?

7 A. Well, it is a form of asphyxia that is due
8 to physical compression of the chest. And
9 although -- I use it in a rather broad form.
10 Although I recognize that I could be seeing this
11 constellation of symptoms from, or findings from,
12 compression of the chest, I can also see it from
13 compression of the neck.

14 Now, I use the broad term "mechanical
15 asphyxia." You will find that there is varying
16 definitions of this term. My definition is, it's
17 from a compression of the body in some locale,
18 whether it's chest or neck, resulting in asphyxia.

19 I don't think either of those scenarios
20 are mutually exclusive. Both or one of those two
21 certainly could have taken place. But in any event,
22 it's still a mechanical pressure applied, resulting
23 in asphyxia.

24 So, you know, I hope that my term is more

1 look at his chest.

2 Q. I'm saying if you had viewed Mr. Owensby
3 without lifting up his shirt, without doing any of
4 that, just as he's clothed, in a normal fashion for
5 the purpose of the question, what injuries would you
6 have been able to see?

7 A. The injuries to his face. I don't know
8 what kind of -- because of course his shirt wasn't
9 there at the time. There was no shirt. So --

10 Q. I don't want you to worry about -- I'm
11 assuming for the purpose of the question that he did
12 have covering over his torso.

13 A. Okay. Well, his left forearm has some
14 abrasions, which if he's wearing a short-sleeve
15 shirt it would be visible.

16 Q. Right. If you have a long-sleeve shirt,
17 it may not be?

18 A. Right.

19 Q. All right. Were any of the injuries that
20 you saw on the facial area injuries that would have
21 necessitated immediate medical attention?

22 MR. MARTINS: Objection.

23 A. The injuries to his face are markers of
24 trauma and they themselves are not injuries that

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Deposition of JASON LEE HODGE, defendant

herein, called by the plaintiff for

cross-examination, pursuant to the Federal Rules of

Civil Procedure, taken before me, Wendy Davies

Welsh, a Registered Diplomate Reporter and Notary

Public in and for the State of Ohio, at the offices

of Helmer, Martins & Morgan Co. LPA, 1900 Fourth &

Walnut Centre, 105 East Fourth Street, Cincinnati,

Ohio, on Thursday, April 8, 2004, at 10:06 a.m.

1 A. Yes.

2 Q. You get a phone call from someone or, I
3 guess, Officer Lawson gets a phone call; is that
4 right?

5 A. Yes.

6 Q. Can you take me from that point forward
7 and give me your best recollection of what happened?

8 A. Well, Officer Lawson received a phone call
9 from someone stating they had somebody they'd like
10 us to talk to. I told him I would ride with him.

11 We drove up to that intersection where the Sunoco
12 was at. I saw officers standing in the Sam's Carry
13 Out parking lot and a lot of civilians around them.

14 We didn't want to blow our cover, so we
15 went over to Roselawn Park, sat over at Roselawn
16 Park. At that point we heard an assistance call
17 come out for the location those officers were at.

18 Q. Let me stop you for a second and ask some
19 questions about what you've just covered. The phone
20 call comes in. Officer Lawson takes the phone call.
21 And then I guess at some point he tells you what has
22 happened, or were you on the phone call?

23 A. No, I wasn't on the phone call.

24 Q. So he takes the phone call and tells you,

1 It was just the first parking lot there.

2 Q. Could you see, from where you were parked,
3 could you see Sam's?

4 A. No.

5 Q. In any event, what happens next?

6 A. The assistance call came out and Lawson
7 drove the car over to the Sam's parking lot. That's
8 when I got out of the car. I saw Hasse at a police
9 car in the Sam's Carry Out lot. He was pointing
10 over to the Sunoco station. I looked over at the
11 Sunoco station, saw several officers struggling with
12 someone, ran over there and gave assistance to them.

13 Q. Do you recall whether or not your partner,
14 Officer Lawson, got out of the car?

15 A. I don't know what he did.

16 Q. Do you have a recollection of Officer
17 Lawson following you in the car over to the Sunoco
18 station?

19 A. I don't know what he did.

20 Q. After the event with Mr. Owensby was
21 completed, after Mr. Owensby was handcuffed and you
22 stood up, do you recall seeing the car that you and
23 Officer Lawson had driven up in the parking lot?

24 A. I don't remember seeing the car. I don't

1 Q. So his head is facing -- is parallel to
2 the store or his body is parallel to the store;
3 would that be fair?

4 A. Roughly, yes.

5 Q. It is facing --

6 A. -- northwest.

7 Q. Yeah, I guess, toward the -- well, toward
8 the island and the intersection of Sam's Carry Out
9 and the Sunoco station, fair?

10 A. In that general direction, yes.

11 Q. Now, when you come up, which side of Mr.
12 Owensby are you on?

13 A. I'm on Owensby's right side.

14 Q. As I understand what you've told me
15 before, you were -- or not what you've told me --
16 what you've told others before, you were between his
17 neck and his shoulder?

18 A. Yes.

19 Q. Are you kneeling down?

20 A. Yes, I am.

21 Q. To your immediate left is Officer Caton?

22 A. Yes.

23 Q. Across from you is Officer Jorg?

24 A. Yes.

1 Q. Somewhere is Officer Hunter?

2 A. Hunter is several feet away from his head,
3 kneeling down.

4 (Deposition Exhibit 154
was marked for identi-
5 fication.)

6 Q. Let me try this. I'll give you what is
7 marked as Exhibit 154. It's just a general sketch
8 of a body, looking at it from the back. Would you
9 just write your name in the position where you were.

10 A. (Witness complies.)

11 Q. Then write "Caton" in the position where
12 Caton was.

13 MR. HELBLING: I didn't catch, what
14 exhibit number is that?

15 MR. MARTINS: 154.

16 Q. Then Hunter.

17 A. Hunter was up in this area. He wasn't
18 anywhere close to his head. I mean, he was --

19 Q. Would you write "Hunter" then at the top
20 and put an arrow indicating it was beyond that area.

21 A. (Witness complies.)

22 Q. Then Officer Jorg?

23 A. (Witness complies.)

24 Q. I believe when you arrived Officer Sellers

1 Q. What was Officer Caton doing at that time?

2 A. He was trying to pull Owensby's arm out
3 from under him to put it to the middle of his back.

4 Q. Was Officer Caton straddling any portion
5 of Mr. Owensby's body?

6 A. No.

7 Q. So he was not on his back or his buttocks
8 or thighs?

9 A. No.

10 Q. Is Officer Caton using both hands?

11 A. I believe he was, yes.

12 Q. Am I understanding you correctly that Mr.
13 Owensby's hand is under his body?

14 A. It wasn't completely under. It was far
15 enough under to where when I grabbed ahold of his
16 arm it felt like he was giving a lot of resistance
17 to keep us from pulling his arm all the way out, but
18 it was far enough out where I could clearly see a
19 handcuff on his right wrist.

20 Q. I take it you did not hear Mr. Owensby say
21 anything?

22 A. I don't recall if he said anything or not,
23 no.

24 Q. You don't recall him cussing or swearing?

1 Q. So a couple seconds go by, you were
2 grabbing at his bicep, what's the next thing that
3 you do?

4 A. I reached over and took Officer Hunter's
5 PR-24 from him.

6 Q. Did you have to get up to get the PR-24?

7 A. I just leaned over a little bit. He was
8 maybe two or three feet away.

9 Q. So I take it you're still on your knees?

10 A. Right.

11 Q. You lean back, reach over, and grab his
12 PR-24?

13 A. I leaned to my side. He was off to my
14 right.

15 Q. So you grab with your right hand?

16 A. Right. Reach out and ask for it as I'm
17 taking it out of his belt.

18 Q. Was Officer Hunter standing or kneeling?

19 A. He was kneeling.

20 Q. So at the point you grab for the PR-24, is
21 it fair to say that Officer Hunter is somewhere
22 toward the right side of Mr. Owensby's head?

23 A. No. It appeared to me that he was towards
24 the middle of it, several feet away.

1 so that it comes under his wrist?

2 A. Right.

3 Q. Then in using a -- prying it back, then
4 you pulled the wrist out?

5 A. Right.

6 Q. Were you successful in doing that?

7 A. Yes.

8 Q. The wrist came out?

9 A. Yes.

10 Q. Once his wrist came out from under him,
11 what happened next?

12 A. Caton immediately pushed his arm towards
13 the small of his back and held it there.

14 Q. Then what happened?

15 A. Officer Jorg took the PR-24 from me and
16 did the same thing to the other side.

17 Q. Were you watching Officer Jorg?

18 A. I really wasn't paying attention to him,
19 no.

20 Q. Do you know how he used the PR-24?

21 A. No, I don't.

22 Q. But in any event, he grabs the PR-24 and
23 soon thereafter Mr. Owensby's left arm is in
24 position to be handcuffed?

1 him up?

2 A. I believe Officer Caton and Jorg and
3 Sellers.

4 Q. Do you recall how the officers picked up
5 Mr. Owensby?

6 A. I believe it was under his -- under his
7 arms, by his arms.

8 Q. Bicep, armpit area?

9 A. Right.

10 Q. Was Officer Jorg still on Mr. Owensby's
11 left side and Officer Caton still on Mr. Owensby's
12 right side?

13 A. Yes.

14 Q. You said possibly Officer Sellers. Do you
15 know what role, if any, Officer Sellers played in
16 getting Mr. Owensby up?

17 A. No, because I really couldn't see him.

18 Q. Is there something in your recollection
19 that causes you to say and possibly Officer Sellers?

20 A. Because he was there with Owensby when I
21 was leaning over to Hunter, so. . .

22 Q. I take it Officer Hunter, in your
23 recollection, did not participate in picking Mr.
24 Owensby up?

1 A. Right.

2 Q. Once Mr. Owensby's picked up, where are
3 you in relation to Mr. Owensby? Are you facing him?
4 Are you off to the side? Are you behind him?

5 A. I'm kind of behind him. As they were
6 picking him up and I was giving the PR-24 back to
7 Hunter, I'm also moving out of the way at that time,
8 because I'm -- now I'm a person in the way, so I
9 move out of the way. Owensby was facing the
10 direction that they were going to be traveling in.

11 Q. I think you've testified that when they
12 initially picked him up, Mr. Owensby was kind of
13 balled up; is that right?

14 A. Yes.

15 Q. Describe for me what you mean by "balled
16 up"?

17 A. He had the heels of his feet pressed
18 against his buttocks.

19 Q. Was his head down?

20 A. I don't recall what his head was doing.

21 Q. Did you see his face when they picked him
22 up?

23 A. No.

24 Q. So you were sufficiently behind that you

1 could not see his face?

2 A. Yes.

3 Q. Did you hear him say anything when they
4 picked him up?

5 A. No, I didn't.

6 Q. No complaint?

7 A. (Shaking head.)

8 Q. Were you breathing heavily as a result of
9 the struggle?

10 A. I don't recall if I was or not.

11 Q. Do you know whether any of the other
12 officers were breathing heavily?

13 A. I didn't really pay attention to that. I
14 don't know.

15 Q. Did any of the officers say anything from
16 the time that Mr. Owensby was handcuffed to the time
17 that they picked him up?

18 A. Somebody had stated, "Put your feet down
19 and walk."

20 Q. That's after he's out?

21 A. Right.

22 Q. I mean, before that?

23 A. Between the time he was handcuffed and --

24 Q. Yes, sir.

1 MR. MARTINS: Yes.

2 MR. HARDIN: And before he was stood up?

3 MR. MARTINS: Before he was stood up.

4 MR. HARDIN: Okay. Objection.

5 A. I don't know if he could have hit him or
6 not.

7 Q. Mr. Owensby is now up. What happens next?

8 A. Now that he's standing up, I saw -- I
9 turned to look, because I heard somebody say,
10 "Walk," and "Put your feet down." I saw the heels
11 of his feet against his buttocks. He put his feet
12 down to the ground and started walking towards the
13 car.

14 Q. When you see him putting his feet down,
15 you're standing behind him?

16 A. Yes.

17 Q. To Mr. Owensby's right side?

18 A. Yes.

19 Q. As he is taken to the car, am I correct in
20 understanding that you describe the way his feet
21 moved as short, choppy steps, like someone who is
22 severely intoxicated?

23 A. Yes.

24 Q. Did you follow the officers as they took